

California Fair Political Practices Commission  
**Conflict-of-Interest Codes – Disclosure Categories**  
**Financial Disclosure Must Relate to Governmental Duties**

---

## Introduction

The FPPC is frequently asked why an agency cannot require its employees to disclose on a Form 700, Statement of Economic Interests, all of the employee's investments, real property, income, and gifts. The following discussion outlines the legal cases and statutory requirements that require, whenever possible, the agency to tailor disclosure categories to the governmental decision making performed by the agency official.

## Discussion

One of the most common problems in agency conflict-of-interest codes is the requirement that employees disclose financial interests that are not related to the employee's governmental position. Case law going back to before the Political Reform Act ("Act") was adopted makes it clear that financial disclosure laws must meet certain constitutional standards, and over breadth must be avoided. (See *City of Carmel-by-the Sea v. Young* (1970), 2 Cal.3d 259; *County of Nevada v. MacMillen* (1974), 11 Cal. 3d 662.)

In the *Carmel* case, the California Supreme Court considered a financial disclosure law that generally required every public official and candidate for state or local office file a statement disclosing the nature and extent of his or her investments in excess of \$10,000 (excluding homes used for personal or recreational purposes) as well as those of his or her spouse and minor children. The court held that the attempted regulation undertook an overbroad intrusion into the right of privacy and thereby invalidly restricted the right to seek or hold public office or employment.

Four years later, in *County of Nevada (supra)* the same court addressed a new financial disclosure law and found that it had been "specially tailored to meet and satisfy the primary concerns of our *Carmel* ruling." The court explained that its "major objection" to the provisions considered in the *Carmel* case was that "No effort is made to relate the disclosure to financial dealings or assets which might be expected to give rise to a conflict of interest; that is, to those having some rational connection with or bearing upon, or which might be affected by, the functions or jurisdiction of any particular agency, whether statewide or local, or on the functions or jurisdiction of any particular public officer or employee." (*County of Nevada, supra*, p. 671.)

In 1976, the Commission was asked to consider two questions with respect to the Act's conflict-of-interest disclosure provisions: (1) does the Act permit the designation of positions that do not entail the making or participation in the making of governmental decisions; and (2) does the Act permit a code reviewing body to approve a conflict-of-interest code that contains provisions requiring disclosure of financial interests that may not foreseeably be affected

materially by decisions made or participated in by designated employees? (*Alperin* Opinion, 3 FPPC Ops, 77.)

The Commission concluded that not only does the Act not permit such activities but Section 87309(c) specifically prohibits a code reviewing body from approving a conflict-of-interest code that designates positions that do not entail the making or participation in the making of governmental decisions or that requires disclosure of financial interests that may not foreseeably be affected materially by the decisions made or participated in by employees holding any designated position.

“The responsibility for determining if a code meets these specifications rests with the ‘code reviewing body.’” (*Alperin, supra*, p.2.) The Commission went on to consider what this obligation entails, and, under Section 87309(c), what a conflict-of-interest code must contain before it may be approved by a code reviewing body.

“This provision is intended to ensure, first, that a conflict-of-interest code requires financial disclosure only from employees required to be designated by Section 87302(a) [the position engages in governmental decisionmaking] and, second, *that a code relate disclosure to the specific duties of such designated employees*. Thus, a code reviewing body would fail to fulfill its obligation under Section 87309(c) if it allowed designation of positions in a code which, to quote the language of Section 87309(c), do not entail the ‘making or participation in the making’ of governmental decisions. *It would be equally improper for a code reviewing body to require disclosure of interests which may not foreseeably be affected materially by decisions made or participated in by designated employees.*” (*Alperin, supra*, pp. 3-4.)

## Summary

It is important to note that an express purpose of the Act is to ensure that the assets and income of public officials be disclosed so that conflicts of interests may be avoided. However, as discussed in the foregoing paragraphs, only those assets and income that *can* be affected by the officials' actions are required to be reported on a public form. A form that, in many cases, is posted on an agency's website.

Thus the challenge is to ensure the proper level of disclosure that strikes an appropriate balance between heading off potential conflicts of interest and an individual's right to privacy. This can only be done if the agency and code reviewing body take a careful look at the agency's governmental programs and functions as well as the specific duties of those positions being designated in the code. It is only for those positions, generally the highest level positions in an agency because the duties of the position are so broad, that narrow tailoring is simply not possible, that an agency may require full reporting of assets and income.